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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-------------------------|--------------------------|------------------|
| 10/658,572 | 09/09/2003 | James Huntington Dabney | R0367-01901 | 3419 |
| 7590 | 04/11/2006 | | EXAMINER | |
| Edward J. Lynch Duane Morris LLP One Market Spear Tower, Suite 2000 San Francisco, CA 94105 | | | ROLLINS, ROSILAND STACIE | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3739 | |
| DATE MAILED: 04/11/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/658,572 | DABNEY ET AL. | |
| | Examiner | Art Unit | |
| | Rosiland S. Rollins | 3739 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/24/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 32-50 and 52-78 is/are pending in the application.
- 4a) Of the above claim(s) 32-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 52-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guziak et al. (US 6162216). Guziak et al. disclose a high frequency electrosurgical system comprising an electrical power generator (col. 4 lines 29-38) configured to produce electrical power at a frequency of about 1 to about 10 MHz in an essentially sinusoidal waveform and a controller (46) configured to control the electrical power from the electrical power generator, an electrosurgical tool (20) configured to receive electrical power from the electrical power generator and a distal interface pod (48) in communication with the power generator. Guziak et al. teach all of the limitations of the claims except the generator being configured to produce electrical power in an essentially sinusoidal waveform having a total harmonic distortion of less than 5%. It would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the generator to produce electrical power in an essentially sinusoidal waveform having a total harmonic distortion of less than 5%, as a mere design choice since electrosurgical generators producing sinusoidal waveforms are old and well known in the art.

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Claims 7-11 and 52-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guziak et al. in view of Rosenstock et al. (US 6458121). Guziak et al. teach all of the limitations of the claims except a splitter, amplifiers and a power combiner. Rosenstock et al. disclose similar system that includes a splitter (38), a plurality of power amplifiers (36a,b), a power combiner (40), a feedback circuit and a set of user inputs (figure 7) to provide precise, computerized, fail-safe control over the power delivered by the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a splitter, amplifiers and a power combiner on Guziak et al. device as a means of providing precise, computerized, fail-safe control over the power delivered by the device.

Response to Arguments


Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Rosiland S Rollins
Primary Examiner
Art Unit 3739